IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

MFA.No. 840 of 2001()

OPMV.933/1993 of MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA
.....

APPELLANT: PETITIONER

T.A.RAMACHANDRAN, AGED 46,
S/O. THARAYIL ANDI,
THARAYIL HOUSE, P.O. KOOLIMUTTOM VIA,
MATHILAKAM, KODUNGALLOOR.

BY ADV. SRI.DINESH R.SHENOY
SRI.T.N.MANOJ

RESPONDENTS: RESPONDENTS
----

1. **A.D.INASU, S/O.DEVASSY,**
ARIMBUPARAMBIL HOUSE, P.O.MATHILAKAM,
THRISSUR.

2. **THE ORIENTAL INSURANCE COMPANY LTD.,**
IRINJALAKUDA.

3. **PRASOBHAN, S/O.SANKARAN,**
CHEMBIPARAMBIL HOUSE,
KOOLIMUTTOM P.O. THRISSUR DISTRICT.

BY ADV. SRI.VPK.PANICKER - R2

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 05/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.F.A. No. 840 of 2001

Dated this the 5th day of July, 2007

Judgment

Koshy, J.

A young man, at the age of 35, met with an accident by which he sustained very serious injuries. He claimed compensation of Rupees Two lakhs contending that the accident occurred due to the negligence of the driver of the vehicle insured by the second respondent insurance company. The tribunal accepted that the accident occurred due to the negligence of the driver of the vehicle insured by the second respondent insurance company, but, awarded only a total compensation of Rs.75,300/-. Only quantum of compensation is disputed in this appeal.

2. It is his case that he is a coconut climber by profession, but, tribunal has assessed only Rs.1,000/- as his monthly income even though, according to him, he was getting Rs.3,000/- per month. We are of the opinion that even if only Rs.60/- is taken as daily income (which is on a very lower side) and if he gets 20 days' work in a month, he will get Rs.1,200/- per month. So, we fix

Rs.1,200/- as the monthly income. Tribunal has taken 16 as the multiplier. We see no ground to interfere in the above multiplier. According to the claimant, since he is a coconut climber and because of the injuries sustained, he is unable to do the coconut climbing and he is also not able to do any other work at that distance of age. Therefore, compensation should be granted for 100% disability. He produced a medical certificate showing that there is 30% disability, but, tribunal has taken 15% disability. Now, we will consider the disability suffered by the appellant.

3. Ext.A6 is the wound certificate which shows the following injuries:

> "1. Deep lacerated irreguklar wound about 8 c.ms. in length on the dorsal aspect of right foot exposing muscles and tendons.
>
> 2. A depression on the lower 1/3 of right leg on the lateral aspect.
>
> 3. Deep lacerated wound 2 1/2 c.ms. in length on the upper 1/3 of right leg on the medial aspect.
>
> 4. Another deep lacerated wound on the lateral aspect of right leg.
>
> 5. Multiple small abrasions on the right leg.

6. Abrasions 2 c.ms. in length on the lateral aspect of right knee."

He was referred to the Medical College Hospital, Thrissur. Ext.A7 is the reference card and he was an inpatient there for more than two weeks. Ext.A7 shows the details of treatment done. Thereafter, he was directed to be treated in the Government Hospital, Pala and he was an inpatient there from 11.6.1993 to 15.7.1993. Ext.A9 series are the admission and discharge certificates issued from the Government Hospital, Kodungallur where he was admitted as an inpatient from 1.5.1992 to 25.7.1992 for compound fracture tibia and fibula. He continued his treatment from 15.2.1993 to 9.6.1993 for ulcer leg and from 21.7.1993 to 27.8.1993 for Osteomyelitis tibia. The tribunal also considered these certificate and further considered as follows:

> "Ext.A10 is the discharge card issued from Medicare Hospital, Kodungallur wherein it is noted that the petitioner took treatment as inpatient in that hospital from 8.2.94 to 29.3.94. The diagnosis was noted therein as 'Chronic Osteomyelitis right leg and old case of compound fracture right leg'. Ext.A11 is the disability certificate issued on 18.4.94 by Dr.Martin P. Joseph,

Orthopaedic Surgeon at Medicare Hospital, Kodungallur wherein it is certified that the petitioner was having compound comminuted fracture right tibia and has undergone multiple surgeries for the same and his permanent disability was assessed at 30% due to the shortening of right lower limb 1.5 c.ms. (2) Wasting of right leg 2 c.ms. (3) Ankylosis of ankle and foot moderate. Ext.A12 series (260 Nos.) are the medical bills for a total amount of Rs.16,901.67 as noted in the document list and as deposed by the petitioner as PW1 from the witness box.

13. The petitioner has shown his right leg to me while he was examined as PW1 before this Tribunal on 16.9.2000 and I found that there are long wound deep scars with ugly looking and swelling etc. on the right leg of the petitioner as noted by me in the order sheet.

14. PW2 is Dr. Martin P. Joseph working as Orthopaedic Surgeon at Medicare Hospital, Kodungallur. It is deposed by PW2 that he treated the petitioner who was admitted in Medicare Hospital on 8.2.94 and was discharged on 29.3.94, that the petitioner had chronic oestomylitis of right leg secondary to old case of compound fracture right leg and was continuing treatment as out patient. PW2 had added that he assessed

> the permanent disability of the petitioner at 30% due to shortening of right lower limb by 1.5 c.ms. wasting of right leg muscles, ankylosis of ankle and foot of moderate degree as noted in the certificate which contains his signature and marked as Ext.A11. PW2 has denied the suggestion put to him by the learned counsel appearing for 2nd respondent that he assessed the permanent disability on higher scale to help the petitioner."

Why the tribunal has reduced 30% disability to 15% is not mentioned in the award anywhere. Even though claimant is not entitled to 100% compensation as he can do other work, there is no reason for reducing the disability from 30% to 15%. Therefore, compensation ought to have been awarded for 30% disability. He has to live with the disability till the end of his life. Therefore, compensation payable for 30% disability will be Rs.1200 x 12 x 16 x $\frac{30}{100}$ = Rs.69,120/-. The tribunal has awarded Rs.28,800/- under this head. So, he will be entitled to an additional compensation of Rs.40,320/- for loss of earning power and disability. Even though it was argued that compensation granted on all other grounds are very

meagre, considering the total compensation awarded, we are not awarding any other amount. Therefore, additional compensation of Rs.40,320/- should be deposited by the second respondent insurance company with 7% interest from the date of application till deposit over and above the decreed amount. On deposit of the amount, the appellant is entitled to withdraw the same.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A.NO.840/2001

JUDGMENT

Dated:5th July, 2007